

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Blanca Fernandez, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

AAA Collectors, Inc., d/b/a Triple Check,)
Inc., a Colorado corporation,)

Defendant.)

JUDGE MORAN
No. 040 2704

MAGISTRATE SIDNEY I. SCHENKIER

DOCKETED

APR 16 2004

CLASS ACTION COMPLAINT

Plaintiff, Blanca Fernandez, individually and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a declaration that the form of Defendant's debt collection letters violate the FDCPA, and to recover damages by reason of Defendant's violation of the FDCPA, and alleges:

JURISDICTION AND VENUE

1. The jurisdiction of the Court is invoked as authorized by § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because the acts and transactions occurred here, Plaintiff Fernandez resides here, and Defendant transacts business here.

PARTIES

3. Plaintiff, Blanca Fernandez, is a citizen of the State of Illinois residing in

the Northern District of Illinois from whom Defendant attempted to collect a consumer debt allegedly owed to JCP Custom Decorating.

4. Defendant, AAA Collectors, Inc., d/b/a Triple Check, Inc. ("AAA") is a Colorado corporation that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or telephone to collect, or attempt to collect, consumer debts, including consumer debts in the Northern District of Illinois.

FACTUAL ALLEGATIONS

5. Defendant AAA sent Plaintiff Fernandez an initial form collection letter, dated July 2, 2003, demanding payment of a consumer debt, which, in pertinent part, stated:

* * *

Account No.: JCP035
Total Now Due: \$2092.51

* * *

This letter was sent within one year of the date of this Complaint and is attached as Exhibit A.

6. Only 19 days later, Defendant AAA sent Plaintiff Fernandez a second form collection letter, dated July 21, 2003, demanding payment for the same alleged debt. The July 21, 2003, letter stated in pertinent part:

* * *

Account No.: JCP035
Total Now Due: \$2106.73

* * *

Your check(s) is being considered for possible listing with various credit bureaus.

We are also considering turning your account(s) over to our attorney or an attorney in your area for his discretion. In the event we file suit against you and are able to obtain judgment against you, we will ask the court to add our court costs to any such judgment provided that state law allows for the recovery of the court costs.

At this time you may want to:

Send the balance above and a copy of this notice to us by return mail at 2950 N.
Academy Blvd #201 Colo Sprgs, CO 80917

or

Call us at (719) 550-0330.

* * *

This letter was sent within one year of the date of this Complaint and is attached as Exhibit B.

7. The statements in Defendant's form collection letters are to be interpreted under the "unsophisticated consumer" standard. (See, Bartlett v. Heibl, 128 F.3d 497, 500 (7th Cir. 1997); Chauncey v. JDR, 118 F.3d 516, 519 (7th Cir. 1997); Avila v. Rubin, 84 F.3d 222, 226 (7th Cir. 1996); and, Gammon v. GC Services, Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994)).

8. Section 1692g of the FDCPA requires that, within 5 days of Defendant AAA's first communication to a consumer, an effective validation notice must be provided, i.e., notice that the consumer has 30 days to challenge the validity of the debt and seek verification of it. Here, although Defendant AAA's first letter (Ex. A) contains the notice required by § 1692g of the FDCPA, other language contained in its second letter (Ex. B) renders that validation notice ineffective. Specifically, the statements in Defendant AAA's second letter, sent only 19 days after AAA's initial letter, demanded Plaintiff to make payment "At this time" and by "return mail" and also threatened to file suit against Plaintiff and to report Plaintiff to "various credit bureaus", making it appear

that the time to seek validation had expired, when, in fact, 11 days remained in the validation period. These statements, individually and/or collectively, would confuse the unsophisticated consumer by creating a false sense of urgency as to whether the 30-day validation period has already expired, and whether the consumer must act immediately, or has the full 30 days to dispute the validity of the alleged debt.

Defendant's form collection letters thus violate § 1692g of the FDCPA. (See, Bartlett, 128 F.3d at 501; Chauncey, 118 F.3d at 519; Avila, 84 F.3d at 226 and Allen v. NCO Financial Services, Inc., 2002 WL 1291791 (N.D. Ill.)(Coar, J.)).

9. Additionally, Defendant's demands to Plaintiff that money was "now due" overshadow, and thus render ineffective, the 30-day validation notice because they confuse unsophisticated consumers as to whether they must act immediately, *i.e.*, "now", or whether they have 30 days to dispute the validity of the alleged debt. Defendant's collection letters thus further violates § 1692g of the FDCPA.

10. Defendant's violations of § 1692g of the FDCPA renders it liable for statutory damages, costs, and reasonable attorneys' fees. (See, 15 U.S.C. § 1692k).

CLASS ALLEGATIONS

11. Plaintiff, Blanca Fernandez, brings this action individually and as a class action on behalf of all persons similarly situated in the State of Illinois from whom Defendant AAA attempted to collect consumer debts allegedly owed to JCP Custom Decorating, from one year before the date of this Complaint, via the same form collection letters that are attached as Exhibits A, and B, and as to which the second letter (Ex. B) was sent within 30 days of the first letter (Ex. A). This action seeks a declaration that the form of Defendant AAA's collection letters violate the FDCPA, and

asks that the Court award statutory damages as authorized by § 1692k(a)(2) of the FDCPA.

12. Defendant AAA regularly engages in debt collection using the same form letters received by Plaintiff Fernandez in its attempts to collect from other persons.

13. The Class consists of more than 35 persons from whom Defendant AAA attempted to collect consumer debts by sending them the same form letters it sent to Plaintiff Fernandez.

14. Plaintiff Fernandez's claims are typical of the claims of the Class. Common questions of law or fact raised by this class action complaint affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

15. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant AAA has acted in a manner applicable to the Class as a whole such that declaratory relief is warranted.

16. Plaintiff Fernandez will fairly and adequately protect and represent the interests of the Class. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this Class Action Complaint will not require extended contact with the members of the Class because

Defendant AAA's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff Fernandez has retained counsel experienced in class action litigation, including class actions brought under the FDCPA.

PRAYER FOR RELIEF

Blanca Fernandez prays that this Court:

1. Certify this action as a class action;
2. Appoint Blanca Fernandez as Class Representative of the Class, and her attorneys as Class Counsel;
3. Declare that the form of Defendant AAA's collection letters violate the FDCPA;
4. Enter judgment in favor of Plaintiff Fernandez and the Class, and against Defendant, for statutory damages, costs, and reasonable attorneys' fees as provided by § 1692k(a) of the FDCPA; and,
5. Grant such further relief as deemed just.

JURY DEMAND

Plaintiff Fernandez demands trial by jury.

Blanca Fernandez, individually and on behalf of all others similarly situated,



One of Plaintiff's Attorneys

Dated: April 15, 2004

David J. Philipps
Mary E. Philipps
Gomolinski & Philipps, Ltd.
8855 S. Roberts Road
Hickory Hills, Illinois 60457
(708) 974-2900
(708) 974-2907 (FAX)



AAA COLLECTORS, INC.

2950 N. Academy Blvd. Suite #201
Colorado Springs, CO 80917-5341DCA
TRIPLE CHECK, INC.

RETURN SERVICE REQUESTED

(719) 550-0330

July 2, 2003

Account No.: JCP035

Total Now Due: \$2092.51

Total may be for more than one account

Personal & Confidential
BLANCA FERNANDEZ JCP035-1
2081 IVY RIDGE DR
HOFFMAN EST IL 60192-4153Remit To:
AAA Collectors, Inc. d/b/a Triple Check, Inc.
2950 N. Academy Blvd. Suite #201
Colorado Springs, CO 80917-5341

Please Enclose This Portion With Your Payment In The Envelope Provided

PLEASE NOTE ADDRESS CHANGES ON BACK OF RETURN COUPON

DEBT DATE CREDITOR	REF NUM	DEBT AMT	ACCOUNT NO.:	INTEREST	AMOUNT DUE
5/25/2002 JCP CUSTOM DECORATING ARL	00099999	2092.42	JCP035	0.09	2092.51

THE ABOVE ACCOUNT(S) HAS BEEN ASSIGNED TO THIS OFFICE FOR COLLECTION.

This notice has been sent to you by a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

Your payment in full or any questions you may have should be directed to this office to ensure proper credit to your account. Your future credit may be at stake. We are members of various credit reporting agencies in both the United States and Canada. You are advised: Unless you, the consumer, notify this collection agency within 30 days after receipt of this notice that you dispute the validity of the debt or any portion thereof, the debt will be assumed to be valid by this collection agency. If you, the consumer, notify this collection agency in writing within 30 days after receipt of this notice, that the debt or any portion thereof is disputed, this collection agency will obtain verification of the debt or copy of a judgment against you and a copy of such verification or judgment will be mailed to you by this collection agency. Upon your written request within 30 days after receipt of this notice this collection agency will provide you with the name and address of the original creditor, if different from the current creditor.

If a consumer notifies a debt collector or collection agency in writing that the consumer wishes the collection agency to cease contact by telephone at the consumer's place of residence and/or place of employment, then no such further contact by telephone shall be made; that the consumer refuses to pay a debt or the consumer wishes the collection agency to cease further communication with the consumer then the debt collector or collection agency shall not communicate further with the consumer with respect to such debt, except for a written communication to advise the consumer that the collection agency's efforts are being terminated, that the collection agency or creditor may invoke specified remedies which are ordinarily invoked by such collection agency or creditor, or where applicable to notify the consumer that the collection agency or creditor intends to invoke a specified remedy permitted by law. If a consumer orally informs a debt collector or collection agency of any of the matters specified in this paragraph, the debt collector or collection agency shall advise the consumer that such communication must be made in writing. If such notice from the consumer is made by mail, notification shall be complete upon receipt. Collection agencies are licensed by the Collection Agency Board of Law, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203. **Consumers shall not send**

Collection Agency Board.
Please mail payment to: AAA Collectors, Inc., 2950 N. Academy #201, Colorado Springs,

EXHIBIT

tabbies

A



2950 N. Academy Blvd. Suite #201
Colorado Springs, CO 80917-5341

RETURN SERVICE REQUESTED

July 21, 2003

Personal & Confidential
BLANCA FERNANDEZ JCP035-3
2081 IVY RIDGE RD
HOFFMAN ESTATES IL 60192-4153



AAA COLLECTORS, INC.

DBA

TRIPLE CHECK, INC.

(719) 550-0330

Account No.: JCP035

Total Now Due: \$2106.73

Total may be for more than one account

Remit To:
AAA Collectors, Inc. d/b/a Triple Check, Inc.
2950 N. Academy Blvd. Suite #201
Colorado Springs, CO 80917-5341



Please Enclose This Portion With Your Payment In The Envelope Provided

PLEASE NOTE ADDRESS CHANGES ON BACK OF RETURN COUPON

DEBT DATE CREDITOR	REF NUM	DEBT AMT	ACCOUNT NO.:	INTEREST	AMOUNT DUE
5/25/2002 JCP CUSTOM DECORATING ARL	00099999	2092.42	JCP035	14.31	2106.73

YOUR CREDIT MAY BE AT STAKE!

ACCOUNT#: JCP035
TOTAL DUE: \$2106.73

Your check(s) is being considered for possible listing with various credit bureaus.

We are also considering turning your account(s) over to our attorney or an attorney in your area for his discretion. In the event we file suit against you and are able to obtain judgment against you, we will ask the court to add our court costs to any such judgment provided that state law allows for the recovery of the court costs.

At this time you may want to:

Send the balance above and a copy of this notice to us by return mail at 2950 N. Academy Blvd #201
Colo Sprgs, CO 80917

or

Call us at (719) 550-0330.

Sincerely,

Collections Department
AAA Collectors, Inc.

P.S. Protect your credit and your credit will protect you.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.
This communication is from a debt collector.

EXHIBIT

B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

**Plaintiff(s): Blanca Fernandez, individually
and on behalf of all others similarly situated,**

**Defendant(s): AAA Collectors, Inc., d/b/a Triple
Check, Inc., a Colorado corporation**

County of Residence: Cook

County of Residence:

Plaintiff's Atty: Gomolinski & Philipps, Ltd.
8855 South Roberts Road
Hickory Hills, Illinois 60457
(708) 974-2900

Defendant's Atty:

JUDGE MORAN
04C 2704

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

MAGISTRATE SIDNEY I. SCHENKIER

**III. Citizenship of Principal
Parties (Diversity Cases Only)**

Plaintiff: - N/A
Defendant: - N/A

DOCKETED
APR 16 2004

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 890 Other Statutory Actions

VI. Cause of Action: Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq.

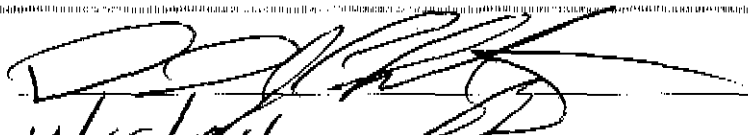
VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand: **statutory damages, costs and reasonable attorneys' fees**
Jury Demand: **Yes**

VIII. This case IS NOT a refiling of a previously dismissed case.

Signature:

Date:


4/15/04

FILED-ED4
41515 21 2004
U.S. DISTRICT COURT

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, print this form, sign and date it and submit it with your new civil action. **Note: You may need to adjust the font size in your browser display to make the form print properly.**

Revised: 06/28/00

1-2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of Blanca Fernandez, individually and on behalf of all others similarly situated, v. AAA Collectors, Inc., d/b/a Triple Check, Inc., a Colorado corporation.

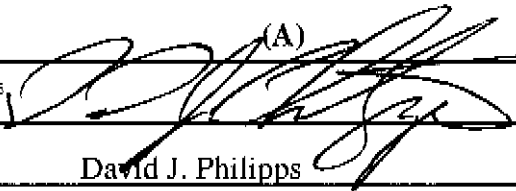
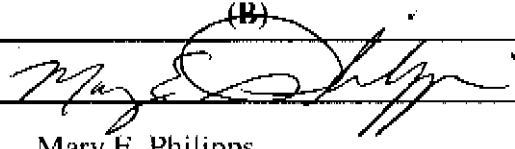
04C 2704

Case Number: _____

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff Blanca Fernandez, individually and on behalf of all others similarly situated.

DOCKETED
APR 16 2004

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME David J. Philipps		NAME Mary E. Philipps	
FIRM Gomolinski & Philipps, Ltd.		FIRM Gomolinski & Philipps, Ltd.	
STREET ADDRESS 8855 S. Roberts Road		STREET ADDRESS 8855 S. Roberts Road	
CITY/STATE/ZIP Hickory Hills, Illinois 60457		CITY/STATE/ZIP Hickory Hills, Illinois 60457	
TELEPHONE NUMBER 708-974-2900		TELEPHONE NUMBER 708-974-2900	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) Ill. Bar No. 06196285		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) Ill. Bar No. 06197113	
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
(C)		(D)	
SIGNATURE		SIGNATURE	
NAME		NAME	
FIRM		FIRM	
STREET ADDRESS		STREET ADDRESS	
CITY/STATE/ZIP		CITY/STATE/ZIP	
TELEPHONE NUMBER		TELEPHONE NUMBER	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
FILED-CD4
APR 15 2004